Supreme Court, U.S.
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85-689

IN THE SUPREME COURT
OF THE UNITED STATES

No.
October Term, 1985

RICHARD R. MUTH, SR.,
Petitioner

vs.

CHRISTINA M. SHOWERS,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTION INVOLVED

Is the issue of paternity and Petitioner's request for blood grouping tests, res judicata, where Petitioner has admitted paternity under oath in writing, has been paying support for over fourteen (14) years, and has had six (6) previous Orders of Court bearing on the issue, all of which have never been appealed?

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COUNTER-STATEMENT OF THE CASE

Petitioner signed a Petition for Support wherein he acknowledged paternity of the child in question in 1967. Pursuant to that Petition, an Order of Court was entered on February 10, 1967, directing Petitioner to pay support and ordered visitation privileges. No appeal was ever taken from that Order.

Subsequently, the child in question went to live with his father, the Petitioner, for a period of approximately two (2) years. The child then went back to live with his mother in 1969. The

Petitioner then filed another Complaint for Support. The Petitioner then, for the first time, denied paternity. On June 3, 1969, the trial Court held a hearing and thereafter entered an Order for support in the amount of Ten Dollars ($10.00) per week. It is again significant to note that no appeal was taken from this Order.

On July 29, 1969, Petitioner filed a Petition to Terminate the Order of Support and a Rule to Show Cause was issued requesting a blood grouping test. On September 30, 1969, the Petitioner's Petition was dismissed. Again, no appeal was

taken from this Order.

Subsequently, on October 22, 1973, Petitioner then filed a Petition to be permitted to file "Appeal Nunc Pro Tunc". On December 10, 1973, an Order of Court was entered by the Honorable L. E. Meyer, ordering an increase in the amount of support and denying Petitioner's request for a blood grouping test. Again, no appeal was taken from this Order.

In a stubborn and litigious fashion, Petitioner then filed a "Motion for Blood Grouping Test, Jury Trial and Supersedeas" in 1979. On December 7, 1979, Petitioner's Petition was dismissed

by the Honorable G. Thomas Gates in a Memorandum Opinion. Again, no appeal was ever taken from this Order.

On February 20, 1980, the Order of Support was once again modified and allowed for an increase. Again, no appeal was ever taken from this Order.

After "six bites of the apple", Petitioner is once again before the Court seeking the blood tests. It is interesting to note the singular and peculiar fashion in which Petitioner raises his latest advance. On December 23, 1982, Petitioner filed a "Petition for Modification of Order". The

reasons alleged for the modification are as follows:

> "Scott turned 18 years of age on October 14, 1982. According to a letter by Mary K. Musser, dated May 6, 1982, Scott was planning to continue his education beyond high school starting in August of 1982. Petitioner desires some evidence to prove this and a complete explanation of all costs." (R-1a)

As is obvious on its face, the Petition of Modification does not request blood test or deny paternity, not that it really matters at this point. A hearing was held on April 14, 1983, and at the opening of the hearing, Petitioner's counsel denied paternity. Respondent's counsel objected to anything being

considered at the hearing except for what was requested in the Petition to Modify Support Order. (See R-13a - 14a)

After the hearing, the Petition for Modification was denied and the Order of Court entered on February 20, 1980, was to remain in full force and effect. Exceptions were taken from the Findings of Fact and Recommendations of the Domestic Relations Hearing Officer, and on June 16, 1983, the trial Court, by Judge Eby, entered an Opinion affirming the recommendations of the Domestic Relations Hearing Officer, thereby denying the

Petition for Modification.

An appeal was taken from that Order by the Petitioner to the Superior Court of Pennsylvania, which affirmed the decision of the trial Court. Subsequently, the Petitioner filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied. Now the Petitioner has filed a Petition for Writ of Certiorari with the United States Supreme Court, which is objected to by the Respondent. The matter is now ripe for disposition by the Honorable United States Supreme Court.

ARGUMENT

Is the issue of paternity and Petitioner's request for blood grouping tests, res judicata where Petitioner has admitted paternity under oath in writing, has been paying support for over fourteen (14) years and has had six previous Orders of Court bearing on the issues, all of which have never been appealed?

There is sufficient case law in Pennsylvania to dispose of this issue and it is respectfully suggested that the previous Support Orders and the acknowledgement of paternity by the Petitioner, in

1967, conclusively establishes paternity and the issue is res judicata. These Orders, all of which were not appealed, preclude the Petitioner's request for blood grouping tests. In this regard, the opinion of Judge Eby in the trial Court is particularly relevant and at page 7 in the trial Court opinion, Judge Eby held as follows:

> "Since paternity was the relevant fact serving as a prerequisite to the entry of that original Order, under the Doctrine of Res Judicata it cannot be challenged or put at issue in any subsequent proceeding. Nedzwesky v. Nedzwesky, 203 Pa. Super. 179, 199 A.2d 490 (1964).
>
> Since Palchinski v. Palchinski, 253 Pa. Super. 171, 384 A.2d 1285 (1978),

Judge Hoffman recited as follows:

> '...Our Court has held that a Support Order necessarily determines the issue of paternity. If a party wishes to challenge a finding of paternity, he must do so by appealing directly from the Support Order. In the absence of an appeal, a finding of paternity is established as a matter of law.'

This defendant acknowledged in 1967 that he was the father of Scott Muth and requested this Court to enter a Support Order pursuant to that representation. We did so. The defendant failed to appeal from that Order or from the numerous determinatins which have been made since then in this matter. Mr. Muth has had so many bites at the apple, that we are afraid there is nothing left but the core. Accordingly, we find that res judicata operates to foreclose his challenge on the issue of paternity. (Once and for all!)"

It is clear in this case that numerous Orders of Court have been entered all bearing on the issue of paternity, and paternity has clearly been established. The cases cited by the Petitioner from other jurisdictions are not on point and should not be considered persuasive by the Honorable Superior Court.

WHEREFORE, it is respectfully requested that the issue of paternity is res judicata and that the request for blood grouping tests should be denied.

RELIEF REQUESTED

The Respondent, Christina M. Showers, requests the Honorable United States Supreme Court to deny the Petition For Writ Of Certiotari.

Respectfully submitted,

STEINER & SANDOE

by: /S/ Kenneth C. Sandoe
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